

Service nor any of its officers or agents is named as a defendant.

[T.D. 75-186, 40 FR 31929, July 30, 1975, as amended by T.D. 85-90, 50 FR 21430, May 24, 1985]

§ 177.8 Issuance of rulings.

(a) *Ruling letters*—(1) *Generally*. The Customs Service will endeavor to issue a ruling letter setting forth a determination with respect to a specifically described Customs transaction whenever a request for such a ruling is submitted in accordance with the provisions of this part and it is in the sound administration of the Customs and related laws to do so. Otherwise, a request for a ruling will be answered by an information letter or, in those situations in which general information is likely to be of little or no value, by a letter stating that no ruling can be issued.

(2) *Submission of ruling letters to field offices*. Any person engaging in a Customs transaction with respect to which a binding tariff classification ruling letter (including pre-entry classification decisions) has been issued under this part shall ascertain that a copy of the ruling letter is attached to the documents filed with the appropriate Customs Service office in connection with that transaction, or shall otherwise indicate with the information filed for that transaction that a ruling has been received. Any person receiving a ruling setting forth the tariff classification of merchandise shall set forth such classification in the documents or information filed in connection with any subsequent entry of that merchandise; the failure to do so may result in a rejection of the entry and the imposition of such penalties as may be appropriate. A ruling received after the filing of such documents or information shall immediately be brought to the attention of the appropriate Customs Service field office.

(3) *Disclosure of ruling letters*. The ruling letter shall be based on the information set forth in the ruling request. No part of the ruling letter, including names, addresses, or information relating to the business transactions of private parties, shall be deemed to constitute privileged or confidential commercial or financial information or

trade secrets exempt from disclosure pursuant to the Freedom of Information Act, as amended (5 U.S.C. 552), unless, as provided in § 177.2(b)(7), the information claimed to be exempt from disclosure is clearly identified and the reasons for the exemption are set forth. Before the issuance of the ruling letter, the person submitting the ruling request, will be notified of any decision adverse to his claim for exemption from disclosure and will, upon written request to Customs within 10 working days of the date of notification, be permitted to withdraw the ruling request. All ruling letters issued by the Customs Service will be available, upon written request, for inspection and copying by any person (with any portions determined to be exempt from disclosure deleted).

(b) *Other rulings*. The Headquarters Office may from time to time issue other rulings with respect to issues or transactions described or suggested by requests for rulings submitted under the provisions of this part, or with respect to issues or transactions otherwise brought to its attention. These rulings, which are statements of the official position of the Customs Service which are likely to be of widespread interest and application, are published in the Customs Bulletin, as described in § 177.10.

[T.D. 75-186, 40 FR 31929, July 30, 1975, as amended by T.D. 80-285, 45 FR 80105, Dec. 3, 1980; T.D. 84-149, 49 FR 28699, July 16, 1984; T.D. 89-74, 54 FR 31516, July 31, 1989]

§ 177.9 Effect of ruling letters; modification or revocation.

(a) *Effect of ruling letters generally*. A ruling letter issued by the Customs Service under the provisions of this part represents the official position of the Customs Service with respect to the particular transaction or issue described therein and is binding on all Customs Service personnel in accordance with the provisions of this section until modified or revoked. In the absence of a change of practice or other modification or revocation which affects the principle of the ruling set forth in the ruling letter, that principle may be cited as authority in the disposition of transactions involving the same circumstances. Generally, a

ruling letter is effective on the date it is issued and may be applied to all entries which are unliquidated, or other transactions with respect to which the Customs Service has not taken final action on that date. See, however, paragraphs (d) and (e) (ruling letters which modify previous ruling letters or positions) and §177.10(e) (ruling letters published in the *Customs Bulletin*).

(b) *Application of rulings to transactions*—(1) *Generally*. Each ruling letter is issued on the assumption that all of the information furnished in connection with the ruling request and incorporated in the ruling letter, either directly, by reference, or by implication, is accurate and complete in every material respect. The application of a ruling letter by a Customs Service field office to the transaction to which it is purported to relate is subject to the verification of the facts incorporated in the ruling letter, a comparison of the transaction described therein to the actual transaction, and the satisfaction of any conditions on which the ruling was based. If, in the opinion of any Customs Service field office by whom the transaction is under consideration or review, the ruling letter should be modified or revoked, the findings and recommendations of that office will be forwarded to the Headquarters Office for consideration, as provided in §177.11(b)(1)(i), prior to any final disposition with respect to the transaction by that office. Otherwise, if the transaction described in the ruling letter and the actual transaction are the same, and any and all conditions set forth in the ruling letter have been satisfied, the ruling will be applied to the transaction.

(2) *Tariff classification rulings*. Each ruling letter setting forth the proper classification of an article under the provisions of the Harmonized Tariff Schedule of the United States will be applied only with respect to transactions involving articles identical to the sample submitted with the ruling request or to articles whose description is identical to the description set forth in the ruling letter.

(3) *Valuation rulings*. Each ruling letter setting forth the proper valuation of an article under the provisions of section 402 of the Tariff Act of 1930, as

amended (19 U.S.C. 1401a), will be applied only with respect to transactions involving the same merchandise and like facts.

(4) *Carrier rulings*. Each ruling letter setting forth the applicability of the navigation laws to a vessel will be applied only with respect to transactions involving operations identical to those set forth in the ruling letter. Each ruling letter setting forth a determination as to whether or not the primary object of a contemplated voyage is coastwise transportation in violation of 46 U.S.C. 289 will be binding on the United States Customs Service with respect to any transaction identical to the facts and circumstances described in the ruling request and undertaken in reliance on the ruling letter.

(c) *Reliance on ruling letters by others*. A ruling letter is subject to modification or revocation without notice to any person, except the person to whom the letter was addressed. Accordingly, no other person should rely on the ruling letter or assume that the principles of that ruling will be applied in connection with any transaction other than the one described in the letter. However, any person eligible to request a ruling under §177.1(c) may request information as to whether a previously-issued ruling letter has been modified or revoked by writing the Commissioner of Customs, Attention: Office of Regulations and Rulings, Washington, DC 20229, and either enclosing a copy of the ruling letter or furnishing other information sufficient to permit the ruling letter in question to be identified.

(d) *Modification or revocation of ruling letters*—(1) *Generally*. Any ruling letter found to be in error or not in accordance with the current views of the Customs Service may be modified or revoked. Modification or revocation of a ruling letter shall be effected by Customs Headquarters by giving notice to the person to whom the ruling letter was addressed and, where circumstances warrant, by the publication of a notice or other statement in the *Customs Bulletin*.

(2) *Effect of modification or revocation of ruling letters*. The modification or revocation of a ruling letter will not be applied retroactively with respect to the person to whom the ruling was

issued, or to any person directly involved in the transaction to which that ruling related, *Provided*:

(i) The request for a ruling contained no misstatement or omission of material facts,

(ii) The facts subsequently developed are not materially different from the facts on which the ruling was based,

(iii) There has been no change in the applicable law,

(iv) The ruling was originally issued with respect to a prospective transaction, and

(v) All of the parties involved in the transaction acted in good faith in reliance upon the ruling and retroactive modification or revocation would be to their detriment.

Nothing in this paragraph will prohibit the retroactive modification or revocation of a ruling with respect to a transaction which was not prospective at the time the ruling was issued, inasmuch as such a transaction was not entered into in reliance on a ruling from the Customs Service.

(3) *Effective dates.* Generally, a ruling letter modifying or revoking an earlier ruling letter will be effective on the date it is issued. However, the Customs Service may, upon application or on its own initiative, delay the effective date of such a ruling for a period of up to 90 days from the date of issuance. Such a delay may be granted with respect to the party to whom the ruling letter was issued or to any other party, provided such party can demonstrate to the satisfaction of the Customs Service that they reasonably relied on the earlier ruling to their detriment. All parties applying for a delay will be issued a separate ruling letter setting forth the period, if any, of the delay to be provided. In appropriate circumstances, the Customs Service may decide to make its decision, with respect to a delay, applicable to all affected parties, irrespective of demonstrated reliance; in this event, a notice announcing the delay will be published in the Customs Bulletin and individual ruling letters will not be issued.

(e) *Ruling letters modifying past Customs treatment of transactions not covered by ruling letters*—(1) *General.* The Customs Service will from time to

time issue a ruling letter covering a transaction or issue not previously the subject of a ruling letter and which has the effect of modifying the treatment previously accorded by the Customs Service to substantially identical transactions of either the recipient of the ruling letter or other parties. Although such a ruling letter will generally be effective on the date it is issued, the Customs Service may, upon application by an affected party, delay the effective date of the ruling letter, and continue the treatment previously accorded the substantially identical transaction, for a period of up to 90 days from the date the ruling letter is issued.

(2) *Applications by affected parties.* In applying to the Customs Service for a delay in the effective date of a ruling letter described in paragraph (e)(1) of this section, an affected party must demonstrate to the satisfaction of the Customs Service that the treatment previously accorded by Customs to the substantially identical transactions was sufficiently consistent and continuous that such party reasonably relied thereon in arranging for future transactions. The evidence of past treatment by the Customs Service shall cover the 2-year period immediately prior to the date of the ruling letter, listing all substantially identical transactions by entry number (or other Customs assigned number), the quantity and value of merchandise covered by each such transaction (where applicable), the ports of entry, and the dates of final action by the Customs Service. The evidence of reliance shall include contracts, purchase orders, or other materials tending to establish that the future transactions were arranged based on the treatment previously accorded by the Customs Service.

(3) *Decision by Customs to grant delay.* The Customs Service will examine all factors relevant to the issue of reliance in determining whether, and for what period, to delay the effective date of a ruling letter described in paragraph (e)(1) of this section. In particular, the Customs Service will examine the past transactions on which reliance is claimed to determine whether there was an examination of the merchandise (where applicable) by the Customs

Service or the extent to which those transactions were otherwise examined and analyzed by the Customs Service to determine the proper application of the Customs laws and regulations. In general, transactions involving small quantities or values, as well as informal entries and other entries or transactions which the Customs Service, in the interest of commercial facilitation and accommodation, processes expeditiously and without examination and/or import specialist review, will be given diminished weight in establishing the required history of consistent and continuous Customs treatment. Unless a notice covering all affected parties is published in the *Customs Bulletin*, each affected party applying for a delay in the effective date of the ruling letter will be advised in a separate ruling letter of the extent to which a delay in the effective date will be applied to their transactions.

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§ 177.10 Publication of decisions.

(a) *Generally.* Within 120 days after issuing any precedential decision under the Tariff Act of 1930, as amended, relating to any Customs transaction (prospective, current, or completed), the Customs Service shall publish the decision in the *Customs Bulletin* or otherwise make it available for public inspection. For purposes of this paragraph a precedential decision includes any ruling letter, internal advice memorandum, or protest review decision. Disclosure is governed by 31 CFR part 1, 19 CFR part 103, and 19 CFR 177.8(a)(3).

(b) *Rulings regarding a rate of duty or charge.* Any ruling regarding a rate of duty or charge which is published in the *Customs Bulletin* will establish a uniform practice. A published ruling may result in a change of practice, it may limit the application of a court decision, it may otherwise modify an earlier ruling with respect to the classification or valuation of an article or any other action found to be in error or

no longer in accordance with the current views of the Customs Service, or it may revoke a previously-published ruling or a previously-issued ruling letter.

(c) *Changes of practice or position.* (1) Before the publication of a ruling which has the effect of changing a practice and which results in the assessment of a higher rate of duty, notice that the practice (or prior ruling on which the practice is based) is under review will be published in the *FEDERAL REGISTER* and interested parties given an opportunity to make written submissions with respect to the correctness of the contemplated change. This procedure will also be followed when the contemplated change of practice will result in the assessment of a lower rate of duty and the Headquarters Office determines that the matter is of sufficient importance to involve the interests of domestic industry. No advance notice will be provided with respect to rulings which result in a change of practice but no change in the rate of duty.

(2) Before the publication of a ruling which has the effect of changing a position of the Customs Service and which results in a restriction or prohibition, notice that the position (or prior ruling on which the position is based) is under review will be published in the *FEDERAL REGISTER* and interested parties given an opportunity to make written submissions with respect to the correctness of the contemplated change. This procedure will also be followed when the change of position will result in a holding that an activity is not restricted or prohibited and the Headquarters Office determines that the matter is of sufficient importance to involve the interests of the general public.

(d) *Limiting rulings.* A published ruling may limit the application of a court decision to the specific article under litigation, or to an article of a specific class or kind of such merchandise, or to the particular circumstances or entries which were the subject of the litigation.

(e) *Effective dates.* Except as otherwise provided for in the ruling itself,